



SECP  
INSURANCE DIVISION  
Islamabad

Before Hasnat Ahmad, Director (Insurance)

*In the matter of*

M/s. Premier Insurance Limited

Show Cause Notice Issue Date: September 09, 2014

Date of Hearing: March 19, 2015

Attended By:

1. Mr. Iftikhar Gadar  
Chief Financial Officer  
M/s. Premier Insurance Limited;
2. Mr. M. K. Baig  
Senior General Manager  
M/s. Premier Insurance Limited.

Date of Order: April 3, 2015

**ORDER**

Under Section 99 read with Section 156 of the Insurance Ordinance, 2000.

.....

This Order shall dispose of the proceedings initiated against the chief executive and directors of M/s. Premier Insurance Limited ("the Company") for alleged non-compliance with Section 99 of the Insurance Ordinance, 2000 (the "Ordinance"). The chief executive and directors of the Company shall be referred to as the "Respondents" hereinafter.

**A. Background**

2. An onsite inspection of the Company was conducted on the order dated November 27, 2012, under Section 59A of the Ordinance, during which, the inspection team observed that amounts on account of commission were deducted by the agents from premium before payment to the Company in violation of Section 99(4). The total amount of commission deducted during the year 2012 was Rs. 1.914 million.

3. In view of the violation highlighted in para 2 above, the Commission initiated penal action(s) by issuance of a Show Cause Notice dated September 9, 2014 to the Respondents, calling upon them to show cause as to why the fine as

SECURITIES AND EXCHANGE  
COMMISSION OF PAKISTAN

Insurance Division, NIC Building,  
63 Jinnah Avenue, Islamabad, Pakistan

PABX: +92-51-9207091-4, Fax: +92-51-9100428, Web: www.secp.gov.pk





provided under Section 156 of the Ordinance should not be imposed on them for violating Section 99(4) of the Ordinance.

4. In response to the said Show Cause Notice, the Respondents, vide their letter dated September 22, 2014, stated that:

*"...we at Premier Insurance Limited concur with your view of strict adherence to the statute and its provision in letter and spirit. However in certain cases the application of law in spirit and letter are defeated by the some dominating market players, who have made practices that are generally acceptable in the market but are not adhering to the law.*

*We at Premier ensure our adherence to Section 99 in letter and spirit in all our conventional business since our inception. However, the instances highlighted by you all relate to the travel insurance business an arena where Premier Insurance was a late entrant and norms of business had already been set by the existing players. In this case the business producing agents are not the regular insurance agents but are active travel agencies. These travel agents are employed by all the insurance companies as agents to sell and promote their travel insurance policies to their regular and walk in customers.*

*As a benchmark treatment all the collected premiums are to be collected and deposited with the insurers who in return would be paid with his commission. This is the general practice followed by us in all our business dealing with our regular argents. However, the travel agencies acting as insurance agents do not comply with section 99 and deduct their commissions at source and pay us the net amount, leaving us with no option to adjust the amounts in our book and record the commission accordingly so our books represent a true and fair view.*

*During the onsite inspection we had debriefed the inspection team that Premier has a negligible portfolio for travel insurance due to late entry in the market and its limited concentration on individual based clientele. Similarly the commission on the business is under a percent of our total payout comission and we adhere strictly to section 99 on all our regular business commission.*

*I hope keeping in view our negligible quantum in the travel business and the corresponding commission the commission would take a lenient view, keeping the market practice established by the pre existent players resulting in travel agents deducting their commission at before passing on the premium. Further, annexed are sample payments and cheque copies with workings received with the premium from the travel agents.*

*Hope the above explanation satisfies the queries raised in the show cause notice. We would request an opportunity for our Senior General Manager and I to appear in person and present our case in front of you allowing a better understanding of our actions resulting in satisfaction of the queries raised in the show case notice."*





**B. Hearings**

5. The Respondents requested for the hearing to defend their stance through the abovementioned response, and therefore, the Commission, vide its notice no. ID/Enf/Premier/2014/21090 dated October 21, 2014, scheduled the hearing for November 18, 2014 at 3:00 p.m. The said hearing was adjourned on the request of the Respondents and therefore was rescheduled for December 4, 2014 at 11:30 a.m. through notice no. ID/Enf/Premier/2014/21255 dated November 11, 2014. The hearing was attended by Mr. Iftikhar Gadar, Chief Financial Officer and Mr. M. K. Baig, Senior General Manager of the Company

6. The Respondents gave their arguments to defend the proceedings of the Show Cause Notice during the hearing of December 4, 2014. However, the matter could not be decided on the basis of the arguments and submissions made by the Respondents. Therefore, another opportunity was provided to the Respondents, vide notice no. ID/Enf/Premier/2015/397 dated February 26, 2015, whereby the hearing in the matter was scheduled for March 19, 2015 at 11:30 a.m. through video link connecting the Head Office with the Karachi Office of the Commission. The hearing was attended by Mr. Iftikhar Gadar, Chief Financial Officer & Company Secretary and Mr. M. K. Baig, Senior General Manager of the Company, for and on behalf of the Respondents.

7. Brief proceedings of the hearing of March 19, 2015 were as follows:

- a. Prior to the start of the hearing proceedings, the Respondents handed over the General Power of Attorney in favor of Mr. Iftikhar Gadar, Chief Financial Officer and Mr. Mirza Khadim Baig, Senior General Manager, to the Commission;
- b. The Respondents were asked to present their stance, on which they stated that their contentions have already been submitted before the Commission through their letter dated September 22, 2014;
- c. The Respondents stated that the Company always ensures its adherence to Section 99 in letter and spirit in all its businesses procured through their own agents, however, the norms and market practices for travel business were already set by the market participants in which the commissions were deducted prior to payment of the premiums to the respective insurers;
- d. The Respondents further pointed out that all the objections raised during the onsite inspection relates to the travel insurance business. The Company offered travel insurance business for 6 to 8 months, and immediately suspended upon receipt of the Show Cause Notice from the Commission. Accordingly, the Company advised the travel agents either to adhere to the provisions of Section 99 of the Ordinance or simply discontinue doing business with the Company;





- e. The Respondents also stated that the Company was a new entrant in the travel insurance business market so the Company inadvertently followed the existing practices including the upfront deduction of the commissions, however, the Company had no intentions to violate the law;
- f. Lastly, the Respondents stated that keeping the overall compliance position of the Company in view and that the Company's travel portfolio was quite negligible, which has already been suspended, a lenient view be taken while deciding the instant matter.

### C. Issues

8. The Respondents of the instant Show Cause Notice were required to ensure compliance with Section 99 of the Ordinance, which states that:

*"(1) Any sums received by an insurance agent from a policy holder or an insurer, other than remuneration payable to the agent by the insurer, shall be deemed to be held on trust for the insurer. Payment by a policy holder to an insurance agent shall be deemed to constitute payment to the insurer.*

...

*(4) It shall be unlawful for an agent to deduct from premiums paid by and received from a policy holder any sums on account of commission due to the agent."*

9. In view of the provisions of Section 99 of the Ordinance, the Company was required to receive the total amount of premiums paid by the policyholders from its agents (travel agents) and to disallow deduction of commissions from the amount of premiums received by those agents.

### D. Summary of arguments and conclusions in respect of each issue

10. The Respondents submitted that the norms of the market were already set by the existing market players, which included upfront deduction of commissions by the agents and then passing on the remaining amount of premium to the respective insurers. The Respondents also submitted that the Company has been a new entrant to the travel insurance business market, so the Company had no influence over the said preset market practices. However, in case of other classes of business of the Company, procured through its own agents, the Company adheres to the provisions of Section 99 of the Ordinance, in letter and spirit. The Respondents also disclosed that the Company has suspended the travel insurance business upon receiving the subject Show Cause Notice.

11. The Respondents' plea that the Company had no influence over the market practices and norms concerning upfront deduction of the commissions from the premiums received from the policyholders by the travel agents, was not an





acceptable argument, as law has to be followed at every cost, no matter how market forces compel a particular entity to violate the provisions of the law. However, the quantum of the Company's travel insurance business was quite insignificant.

**E. Overall conclusion**

12. I have carefully examined and given due consideration to the written and verbal submissions of the Respondents, and have also referred to the provisions of the Ordinance and other legal references, I am of the view that there has been an established default of the Section 99 of the Ordinance.

13. However, before proceeding further, I find it relevant to discuss the duties of the directors who are required to be vigilant and perform their duties with due care, as they are supposed to be well aware of their legal obligations in connection with the requirement of Rules and Regulations framed for an insurer.

14. After carefully examining the arguments and studying the facts and findings of the case as mentioned in the above paras of this Order, the default of Section 99 of the Ordinance is established, as aforesaid. Therefore, the penalty as provided under Section 156 of the Ordinance can be imposed onto the Respondents.

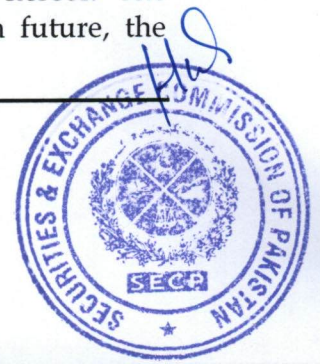
15. The provisions of Section 156 of the Ordinance state that:

*"Penalties. - Except as otherwise provided in this Ordinance, any insurer who makes default in complying with or acts in contravention of any requirement of this Ordinance, or any direction made by the Commission, the Commission shall have the power to impose fine on the insurer and, where the insurer is a company, any director, or other officer of the company, who is knowingly a party to the default, shall be punishable with fine which may extend to one million rupees and, in the case of a continuing default, with an additional fine which may extend to ten thousand rupees for every day during which the default continues."*

16. However, it was noted that the quantum of the Company's travel insurance portfolio was quite insignificant and that the Company adheres to the provisions of Section 99 of the Ordinance in case of its business procured through its own agents, lenient view can be taken.

**F. Penalties and directions**

17. In exercise of the power conferred on me under Section 156 of the Ordinance, I, take a lenient view by not imposing the penalty as provided under the said Section of the Ordinance, and thus condone the Respondents for the reasons and circumstances as mentioned in the foregoing paras hereof. The Respondents are warned that in case of similar non-compliance in future, the





Commission shall take stern action against the Company. Further, the Respondents are hereby directed to observe strict compliance with the provisions of the Ordinance, Rules and Regulations in future.

18. This Order is issued without prejudice to any other action that the Commission may initiate against the Company and / or its management (including the Chief Executive Officer of the Company) in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

**Hasnat Ahmad**  
Director

